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No. 90-1484

Supreme Court, U.S.  
FILED

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1990

UNITED STATES OF AMERICA,  
v. *Petitioner,*  
FRED STANTON SMITH, *et al.,*  
*Respondents.*

On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
for the Eleventh Circuit

**BRIEF OF RESPONDENTS HOLYWELL, ET AL.,  
IN SUPPORT OF PETITION  
FOR A WRIT OF CERTIORARI**

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*Holywell Corporation, Miami*  
*Center Limited Partnership,*  
*Miami Center Corporation,*  
*Chopin Associates and*  
*Theodore B. Gould*

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Respondents Holywell Corporation, Miami Center Limited Partnership, Miami Center Corporation, Chopin Associates and Theodore B. Gould (the "Holywell respondents");<sup>1</sup> by their undersigned counsel, respectfully submit this brief in support of the Solicitor General's petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

We fully support the Solicitor General's petition.

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<sup>1</sup> Respondent Miami Center Corporation has no subsidiaries; its parent is respondent Holywell Corporation, which has no parent corporations or subsidiaries other than wholly owned subsidiaries. None of the other Holywell respondents is a corporation. See S. Ct. R. 29.1.

We have also petitioned for a writ of certiorari to review the judgment of the court of appeals in this case. Petition for a Writ of Certiorari, *Holywell Corp. v. Smith*, No. 90-1361 (filed February 28, 1991).

As we explained in that petition, the court of appeals' decision (which occasioned a vigorous and cogent dissent) presents a pernicious misapplication of a matrix of federal statutes designed to insure that federal taxes are paid by the fiduciaries of insolvent business entities. By holding that the trustee in this case is exempt from those statutes, the court of appeals has created a tax loophole available in a broad spectrum of cases. Our petition and that of the Solicitor General demonstrate the grave error committed by the court of appeals. Its decision is contrary to the plain language of the statutes, to the purposes of the tax and bankruptcy laws, and to the decisions of this Court and those of every other circuit to address this question.

Respectfully submitted,

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